

Date: October 12, 2000

BQA 00-071

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Cc:	Susan Schroeder, Director Bureau of Quality Assurance	

<p style="text-align: center;">Misconduct Reporting Requirements For Entities Regulated by the Bureau of Quality Assurance</p>

Despite the fact that the Caregiver Law increased the number of facilities required to report incidents of caregiver misconduct by ten times, most reports still come from nursing homes, who have had federal reporting requirements for nurse aides since 1993. To ensure entities understand their responsibility to report allegations of caregiver misconduct, this memo provides a review of the Bureau of Quality Assurance (BQA) requirements outlined in BQA Memo 99-064 for entity investigations and reporting of caregiver misconduct and injuries of unknown source. These requirements, which apply a consistent method for the mandated reporting by all entities regulated by BQA, may also be found in the on-line Wisconsin Caregiver Program Manual at www.dhfs.state.wi.us/rl_DSL/caregiver/CgvrProgMan.

Misconduct includes abuse or neglect of a client or misappropriation of a client's property, as defined under ch. HFS 13 of the Wisconsin Administrative Code. Examples include, but are not limited to:

- Physical abuse: hitting, slapping, pinching or kicking, to intentionally cause harm;
- Sexual abuse: harassment, inappropriate touching or assault;
- Verbal abuse: threats of harm, saying things to intentionally frighten a client;
- Mental abuse: humiliation, harassment, intimidation with threats of punishment or of depriving a client of care or of his/her possessions;
- Neglect: intentionally withholding care, failure to carry out a plan of care that could reasonably be expected to cause pain, injury or death of a client;
- Misappropriation of property: theft of money, identity, credit cards or jewelry, misuse of property, such as using a client's phone without consent.

All staff persons must immediately report incidents of suspected caregiver misconduct or injuries of unknown source to a person with supervisory authority in their health care entity. It is then the facility's responsibility to decide how to proceed. An entity can learn of an incident from:

- Receiving the verbal or written statement of a client;

- Receiving a verbal or written statement of someone in a position to have knowledge of the incident;
- Discovering an incident after it occurred;
- Hearing about an incident from others;
- Observing injuries (physical, emotional or mental) to a client;
- Observing misappropriation of a client's property; or
- Otherwise becoming aware of an incident.

Entity Investigative Responsibilities

All entities regulated by BQA must conduct a thorough investigation and document their findings for **all** incidents reported to them. **Immediately** upon learning of the incident, the entity must take necessary steps to protect clients from possible subsequent incidents of misconduct or injury while the matter is pending. In addition to BQA reporting requirements, entities are encouraged to notify local law enforcement authorities in any situation where there is a potential criminal violation of the law.

Mandated Incident Reporting

Incidents **must** be reported to BQA when:

1. The entity has reasonable cause to believe that they or another regulatory authority can name a suspected caregiver, **and**
2. The entity has reasonable cause to believe they have sufficient evidence, or another regulatory authority could obtain the evidence, to show the alleged incident occurred, **and**
3. The entity has reasonable cause to believe the incident meets, or could meet, the definition of abuse, neglect or misappropriation.

When an entity concludes that these three conditions are true, the entity **must** report the incident to BQA on the Incident Report form (DSL-2447).

If one or more of the following three conditions are true, then the entity must decide whether the incident must be reported:

1. The entity cannot name the person(s) they believe committed the incident, or the entity has less than reasonable cause to believe another regulatory authority could identify the person(s) with some further degree of investigation; **or**
2. The entity has less than reasonable cause to believe it has or that any other regulatory authority could obtain sufficient evidence to show the incident occurred; **or**
3. The entity has less than reasonable cause to believe the incident meets one or more of the definitions of abuse, neglect, or misappropriation in HFS 13.

Refer to the "Caregiver Misconduct and Injuries of Unknown Source Entity Investigation and Reporting Requirements" flowchart for assistance in determining if it is mandatory to report the incident to BQA. (See Attachment 1).

Optional Incident Reporting

The entity is not required to report an incident when:

- The entity cannot name a suspect and believes no other regulatory authority could name a suspect, **or**
- The entity does not believe it has or another regulatory authority could get sufficient evidence to show the incident actually occurred, **or**
- The entity does not believe that the incident meets the definition of abuse, neglect or misappropriation, **and**
- The entity can affirmatively rule out the incident as caregiver misconduct.

Then, the entity must investigate and document the incident but it is not necessary to report it to BQA.

The entity is also not required to report an incident when:

- The entity cannot name a suspect and believes no other regulatory authority could name a suspect, **or**
- The entity does not believe it has or another regulatory authority could get sufficient evidence to show the incident actually occurred, **or**
- The entity does not believe the incident meets the definition of abuse, neglect or misappropriation, **and**
- The entity can not affirmatively rule out the incident as misconduct **but the effect on the client is minor**. A minor effect on the client is one that causes no apparent physical, emotional, or mental pain or suffering to a client.

Again, the entity must investigate and document the incident but it is not necessary to report it to BQA.

Reported Incidents

Follow these steps to report an incident:

1. Use Incident Report form DSL-2447. Complete the form in its entirety and attach appropriate documentation such as: care plans, floor plans, medical statements, photos, etc. Entities may also wish to use the Witness Statement form DSL-2448.
2. For allegations involving noncredentialed staff, submit the Incident Report to BQA's central office at:

**Caregiver Regulation and Investigation Section
Bureau of Quality Assurance
P.O. Box 2969
Madison, WI 53701-2969
Phone: (608) 261-7650
FAX: (608) 267-1445**

When the alleged caregiver misconduct involves staff credentialed by the Department of Regulation and Licensing, including but not limited to registered nurses, licensed practical nurses, physicians, etc., reports should be sent to the:

**Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935**

3. Ensure the completed Incident Report is submitted according to the appropriate timeframe.
 - Nursing homes and intermediate care facilities for the mentally retarded (ICFs/MR) that are certified to receive Medicare and Medicaid funds, must submit reports of alleged caregiver misconduct to BQA within **five (5) working days** of the incident or the date the entity became aware of the incident.
 - All other entities must submit reports of alleged caregiver misconduct to BQA within **seven (7) calendar days** of the incident or the date the entity knew or should have known of the incident.

Unreported Incidents

Entities must maintain the results of the **30** most recent investigations that were not forwarded to BQA. Entities may still use the Incident Report (DSL-2447) to document the incident and investigation results. **Entities will be subject to sanction for failure to report an incident** if the following is true relative to any given incident:

- The entity failed to investigate immediately upon learning of an incident;
- The entity failed to conduct a thorough investigation and document the results; or

- The entity failed to make good-faith decisions in determining whether or not to report an incident.

Reporting Requirement Penalties

Entities that intentionally fail to follow the reporting requirement procedures for caregiver misconduct, including for contracted employees, may be subject to one or more of the following sanctions:

- Forfeiture of not more than \$1000;
- BQA approved or imposed corrective plan;
- BQA imposed regulatory limits;
- Suspension or revocation of license; or,
- Notification of the act and any corresponding forfeiture in the local newspaper.

The Wisconsin Caregiver Program: A Blueprint for Quality Care video

The Wisconsin Caregiver Program: A Blueprint for Quality Care video is now available for purchase.

The video is an effective training tool for all staff working in health care facilities regulated by the Bureau of Quality Assurance. Facilities are responsible for training staff about the Caregiver Program to understand their role in reporting incidents of caregiver misconduct. The video defines caregiver misconduct and provides case examples of abuse of a client, neglect of a client, and misappropriation of a client's property. The video includes prompts to stop the tape for discussion and review of procedures and protocol. One video guide is included with each videocassette and additional copies may be ordered. Caregivers can use the guide to follow along with the video and keep it for future reference.

To receive information about ordering the Wisconsin Caregiver Program: A Blueprint for Quality Care video and accompanying video guide, please call the Caregiver Intake Unit at (608) 267-7650.

As always, please access the Department's web site at www.dhfs.state.wi.us; click on "Licensing" then on "Caregiver Program (including background checks)" for more information about the Caregiver Law. There you will find the Wisconsin Caregiver Program Manual (for entities regulated by BQA), forms, rules and regulations and other useful information. You may also contact the Caregiver Intake Unit at (608) 261-7650 or Caregiver_Intake@dhfs.state.wi.us.

Attachment